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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,773	06/27/2003	Kevin Wince	082318-1011	6445

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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
100 GALLERIA PARKWAY, NW  
STE 1750  
ATLANTA, GA 30339-5948

EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/607,773

Applicant(s)

WINCE, KEVIN

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: the status of the related application should be updated.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: on line 2, "potion" presumably should be changed to --portion--. Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,599,222 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because each

of the limitations claimed in the application are disclosed in the claims of the patent in light of the specification.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by *Jennings* (US Pat. 5,653,664). *Jennings* discloses a weight system 10 comprising first and second dumbbells 12,14 each comprising a center portion having opposing ends and a borehole disposed axially therein forming an interior load area defined by a length and a diameter. Each dumbbell has a first end cap 26,28 releasably engaging one of the opposing ends of the center portion. Each dumbbell has a second end cap 34,36 engaging the opposing end of the center portion opposite the first end cap. A barbell adapter 16 releasably receives the first and second dumbbells to form an elongated barbell-type exercise device. Either end cap can be considered a stop means. A plurality of capsules 22 can be selectively disposed in the interior load area of each dumbbell to fill the load area. The capsules may comprise metals of various densities so that the capsules vary in weight, such that some capsules weight less than other capsules. The system may be constructed from two lengths of pipe having threaded ends joined together in the middle by a threaded coupling (col. 5, lines 16-19).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jennings* (US Pat. 5,653,664) in view of *Caruthers* (US Pat. 5,496,244). *Jennings* has been discussed above, and such discussion is incorporated herein. *Jennings* discloses the invention as claimed except for explicitly stating that a capsule may be a spacer capsule weighing less than a weight capsule (claims 1, 6 and 13). In the event Applicant is not convinced that a second weight capsule having a weight less than a first weight capsule is considered a spacer capsule, this rejection is forwarded.

*Caruthers* discloses a weight system comprising a pair of dumbbells 10. Each dumbbell comprises a center portion 16 having a borehole disposed axially therein forming an interior load area defined by a length and a diameter. First and second end caps 20,21 engage each end of the center portion. A plurality of weight capsules 18 and/or spacer capsules 19,25 are selectively disposed within the load area to fill up the load area. The weight capsules are fabricated from a dense material and provide the desired weight for the dumbbell. The spacer capsules are made of foam or other lightweight material and fill up the remaining space within the center portion not occupied by the weight capsule(s) so that the weight capsule(s) are prevented from shifting within the load area during exercise use.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the weight system of *Jennings* with the spacer weights of *Caruthers*, since *Caruthers* teaches that spacer capsules permit a selected number of weight capsules to be retained within the center portion of the dumbbell and prevent the weight capsule(s) from shifting during exercise use.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Bramson* (US Pat. 2,521,336), *Bender* (US Pat. 3,758,109), *Porkka* (US Pat. 5,752,898), *McClendon* (US Pat. 5,876,312), *Scopino et al.* (US Pat. 6,379,286 B1) and *Stephan et al.* (US Pat. 5,312,314) disclose weight systems having features that read upon some of the claimed limitations in the application.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976.

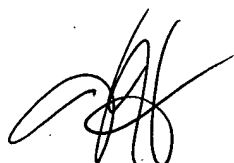
The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM

Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
September 20, 2005

JEROME W. DONNELLY  
PRIMARY EXAMINER

